

Appeal from a decision of the Idaho State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas leases I-12103 and I-16837.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

Under 30 U.S.C. § 188(c) (1976), a lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

2. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing a rental payment after it is due does not constitute reasonable diligence.

APPEARANCES: O. L. Foster, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

O. L. Foster has appealed the decision of the Idaho State Office, Bureau of Land Management (BLM), dated July 16, 1982, denying his petition for reinstatement of terminated oil and gas leases I-12103 and I-16837. Combined rental for the leases in the amount of \$3,209 was due in the Idaho State Office on or before July 1, 1982. BLM received appellant's payment and petition for reinstatement on July 6, 1982. As appellant's payment was postmarked after the due date, BLM did not feel that appellant had exercised "reasonable diligence" as required by 43 CFR 3108.2-1(c)(2).

In his statement of reasons, appellant states that he had been in Kentucky drilling wells and simply "forgot" to mail the payment on time.

[1, 2] Under 30 U.S.C. § 188(c) (1976), where the rental is received within 20 days after the due date, a terminated oil and gas lease may be reinstated upon a showing by the lessee that the failure to pay on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence. In absence of such proof, a petition for reinstatement is properly denied. See, e.g., Arnold L. Gilberg, 57 IBLA 46 (1981); Alice M. Conte, 46 IBLA 312 (1980); J. R. Oil Corp., 36 IBLA 81 (1978). Untimely payment of the rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Harold W. Fullerton, 46 IBLA 116 (1980); Hubert W. Scudder, 35 IBLA 58 (1978). Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2).

Forgetting to mail the payment on time does not constitute reasonable diligence on the part of the appellant. Appellant has presented no evidence to demonstrate that the failure to pay was justifiable. Therefore, the reinstatement provisions of 30 U.S.C. § 188(c) (1976) do not apply. BLM's decision rejecting appellant's petition for reinstatement of oil and gas lease I-12103 and I-16837 filed pursuant to 30 U.S.C. § 188(c) (1976) must be affirmed. We note, however, that section 401 of the recently enacted Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451, 96 Stat. 2447, signed January 12, 1983, amends section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1976), to afford an additional opportunity to reinstate a lease terminated by operation of law. 1/

1/ Section 401 added the following new subsection (d)(2) to 30 U.S.C. § 188 (1976):

"(2) No lease shall be reinstated under paragraph (1) of this subsection unless --

"(A) with respect to any lease that terminated under subsection (b) of this section prior to enactment of the Federal Oil and Gas Royalty Management Act of 1982:

"(i) the lessee tendered rental prior to enactment of such Act and the final determination that the lease terminated was made by the Secretary or a court less than three years before enactment of such Act, and

"(ii) a petition for reinstatement together with the required back rental and royalty accruing from the date of termination, is filed with the Secretary on or before the one hundred and twentieth day after enactment of such Act, or

"(B) with respect to any lease that terminated under subsection (b) of this section on or after enactment of the Federal Oil and Gas Royalty Management Act of 1982, a petition for reinstatement together with the required back rental and royalty accruing from the date of termination is filed on or before the earlier of --

"(i) sixty days after the lessee receives from the Secretary notice of

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Idaho State Office is affirmed.

R. W. Mullen

Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge.

fn. 1 (continued)

termination, whether by return of check or by any other form of actual notice, or

"(ii) fifteen months after termination of the lease."

Since BLM has not yet promulgated regulations addressing what time limits shall apply under this section to leases terminated before enactment of the Act where denial of reinstatement under 30 U.S.C. § 188(c) (1976) is upheld by the Board on behalf of the Secretary after enactment, appellant should inquire immediately at the Idaho State Office of BLM if he wishes to avail himself of this provision.

